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No. 98 891

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1998

ROBERT A. HIRSCHFELD
Petitioner
v.
THOMAS ZLAKET
Chief Justice, Arizona Supreme Court;
THE SUPREME COURT OF ARIZONA;
and its subsidiary,
THE STATE BAR OF ARIZONA
Respondents

On Petition for a Writ of Certiorari to the Arizona Supreme Court

PETITION FOR WRIT OF CERTIORARI

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November 23, 1998

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QUESTIONS PRESENTED

1. Does refusal of the Arizona Supreme Court to hear evidence of which it is the sole finder of fact, constitute denial of due process to an attorney jeopardized with disbarment?

2. Does designation of the only permissible fact-finding adjudication as an "appeal" deny due process by inverting the burden of proof?

3. Does delegation of judicial fact-finding to the prosecutor deny due process?

4. Is attempted faithful adherence by an attorney to his obligation to render services in a non-refundable, earned-upon-receipt retainer contract ethical misconduct, when the client attempts to unilaterally breach the contract by demanding a refund ?

5. Is Arizona Supreme Court Disciplinary Rule 31(c)(10), prohibiting Bar resignation at the sole discretion of an attorney unless "in good standing" void, as violating the free association guarantee of the First Amendment, U.S. Constitution

LIST OF PARTIES

Respondent Thomas Zlaket is Chief Justice of the Arizona Supreme Court.

Respondent Arizona Supreme Court is the only judicial entity having jurisdiction over membership in, and operation of, the State Bar of Arizona.

The Arizona State Bar is an integrated bar association wholly subsidiary to the Arizona Supreme Court and is named as a matter of form, but does not have party standing.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment entered in this proceeding on August 26, 1998, and the opinion upon which the judgment was based, published July 28, 1998 by the Arizona Supreme Court.

OPINIONS BELOW

The Opinion of the Arizona Supreme Court ___Ariz. ___, 960 P.2d 640 (July 28, 1998) the Judgment (August 26, 1998) appear in the appendix hereto, as Appendices A, and B respectively.

JURISDICTION

The judgment of the Arizona Supreme Court was entered on August 26, 1998. This petition for certiorari is being filed within 90 days of that date. Jurisdiction is invoked under 28 U.S.C. §1257. Petitioner in his "Appeal" herein expressly raised the federal constitutional issues and subsidiary pleadings encompassed by the subject disbarment proceedings. Since they were before the Arizona Supreme Court, its short-shrift 7/28/98 general unexplained, denial[1] (Appendix B) *"...we reject respondent's jurisdictional arguments.."*, upholding the herein-challenged rules[2] and procedures, suffice for the U.S. Supreme Court's exercise of §1257. Jurisdiction.

STATUTORY PROVISIONS INVOLVED

There is no *statutory* basis for any of the complained-of disbarment procedures. The integrated bar of Arizona is wholly a creature of the Arizona Supreme Court's *Judicial Rules* [3], not subject to checks and balances in the state system of government. The Arizona Supreme Court is simultaneously *the first and final state court* to determine bar discipline matters, and is the court of last resort in applying the Arizona State Constitution to such matters. Thus, valid

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[1] *Largent v. Texas*, 318 U.S. 418 (1943); *Lawrence v. State Tax Commission*, 286 U.S. 276, 282-83 (1932)

[2] *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977); *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447 (1978); *In re R.M.J.*, 455 U.S. 191 (1982)

[3] The pertinent state rules are recited verbatim in Appendix C herein.

objection, that elements of Arizona Supreme Court disbarment proceedings violate Arizona Constitutional provisions,[4] is inherently immune from higher-court review via our federal system, leaving the Arizona Supreme Court free to violate its state constitution in its own proceedings with impunity.

Therefore, the sole remedy available to victims of Arizona's Supreme Court Rules governing State Bar Membership and discipline, and the capricious, politicized application of those rules, is to seek review of cognizable federal constitutional infringements by way of certiorari from the United States Supreme Court.

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[4] Among such elements raised by Petitioner in the Arizona Supreme Court proceedings, and ignored or brushed aside by that state's highest court, were Arizona Constitutional prohibition of:

(a) The State Bar Rule requiring continued involuntary Bar Membership of a person who refuses membership in the labor-organization-structured State Bar Association despite Arizona's Article XXV Constitutional "*Right to Work*" provision,

"*Article XXV. Right to Work without membership in labor organization*
No person shall be denied the opportunity to obtain or retain employment because of nonmembership in a labor organization, nor shall the State or any subdivision thereof, or any corporation, individual or association of any kind enter into any agreement, written or oral, which excludes any person from employment or continuation of employment because of non-membership in a labor organization."

(b) State Supreme Court *rulemaking* which under the guise of ethics rules interferes with the member-attorney's *substantive right* to rely on voluntary non-refundable, earned-upon-receipt initial retainer contracts. The Arizona Constitution gives the Arizona Supreme Court "power to *make rules* relative to all *procedural matters* in any court." Article 6, section 5 (Emphasis added). The primary statutory provision which limits the judicial rulemaking power is A.R.S. § 12-109(A):

"The supreme court, *by rules promulgated from time to time*, shall *regulate pleading, practice and procedure* in judicial proceedings in all courts of the state for the purpose of simplifying such pleading, practice and procedure and promoting speedy determination of litigation upon its merits. *The rules shall not abridge, enlarge or modify the substantive rights of a litigant.*" (Emphasis added).

STATEMENT OF THE CASE

Irreparable, fatal damage was inflicted by a 1995 "interim" suspension upon Petitioner's then-viable, public-beneficial law practice. Petitioner was one of very few advocates who aggressively and fearlessly stood up to preserve father-child relationships in Arizona's domestic relations and juvenile courts. Petitioner has no illusion about resurrecting his law practice in light of the massive, bad-faith, destructive forces arrayed against him, no matter what the outcome of U.S. Supreme Court proceedings. However, the State Bar and State Supreme Court injustices perpetrated in his sham-disbarment proceedings are capable of repetition, yet evading review. Petitioner not only retains standing to seek relief; he is perhaps in a unique position to do so. There is no further retaliation available to those who vindictively perpetrated his disbarment. They have exhausted their wrongful state-court power, and now are vulnerable to correction and sanction from this high, court, which stands above petty Arizona politics.

This case arises from a politically-motivated campaign by certain Judges, Lawyers, and functionaries of the Arizona State Bar, for the *de-facto* purpose of wrongfully, under color of law, permanently disabling the much-needed, valuable, father-representational services of former Bar Member, Petitioner Robert A. Hirschfeld.

Petitioner remains an outspoken public critic of Arizona Bar and Bench's corruption and cronyism, as well as of the usurpation of litigants' discovery rights contained in the so-called "Zlaket Rules" (ARCP Rule 26.1). Petitioner believes, is informed, and again declares that he was incapable of receiving a fair trial before any panel of the Arizona State Bar. Further, that pre-argument statements made from the bench by four of the Justices of the Arizona Supreme Court, based entirely upon contemporaneous, slanted newspaper

articles, on 6/7/95, gave him reason to believe that he could not receive a fair hearing from that state's highest court in the "disbarment" proceedings.[5]

On July 29, 1996, Petitioner submitted to the Full Disciplinary Committee of the State Bar, his "*Memorandum re: Objection to recommendations of Bar Committee 6F*", (Appendix E) which the Disciplinary committee apparently rejected without comment in reaching its outrageous, wrongful recommendation. The 7/29/96 "Objection" document properly urged that the state-and-federal-constitutionally-deficient bar proceedings be vacated.

Modeled after Emile Zola's 1898 published indictment of official misconduct in the infamous "Captain Dreyfus" affair, Petitioner's "Objection" took to task many of the identifiable political, bad-faith, proponents of Hirschfeld's disbarment, including several of the Arizona Supreme Court Justices. There can be no doubt that Chief Justice Zlaket, who was expressly criticized therein, read the 7/29/96 document (Appendix E hereto), a copy of which was appended to Petitioner's so-called "appeal" brief to the Arizona Supreme Court. Nevertheless, the same justices proceeded, after a year of delay, to concoct their published defamation of Respondent with apparently no consideration of recusal arising from their own amply demonstrated bias and prejudice against him personally.

Petitioner was an idealist and an optimist regarding the justice system when he applied to law school in 1981 at age 40, and became a member of the Arizona Bar in 1985. He retains his faith in ultimate success of the *Fathers Rights Movement*, which spurred his now-ended law career. But the

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[5] Four Justices of the Arizona Supreme Court who made said pre-evidentiary statements on 6/7/95 were reminded of, but ignored, their own obligations to recuse themselves pursuant to *Rule 81, Arizona Code of Judicial Conduct, Canon 3(E)(1)(a).*

demonstration of bias, prejudice, internal chicanery and political backstabbing in the State Bar of Arizona eventually persuaded him that he must refuse further membership in such an organization. He is thus in a rare position to assert this Petition for Certiorari in seeking imposition of the only higher power available, upon an Arizona judiciary which refuses to clean its own house, and which will absent such intervention, undoubtedly continue to terrorize politically unpopular Arizona Bar members.

In over seven hundred cases, during Petitioner's ten years of active law practice, primarily representing fathers in contested domestic relations and juvenile matters, he achieved an extraordinarily high percentage in which the father retained some form of custody, and in which a jeopardized father-child bond was preserved.

Petitioner refused to apologize for the lawful, aggressive, fidelity he strived to maintain toward every client. Former Bar Counsel Alan Shayo stated, at the first, 1994-attempted suspension hearing, words to the effect that ***"Hirschfeld's problem is that he places his duty to his clients above those to the court."*** No matter how much that ***true*** statement enrages Petitioner's enemies and detractors, he remains proud of that faithful dedication, and is saddened that a judicial system should permit him and his clients to be punished for it.

In a vicious, factually unfounded vituperation, Respondent Chief Justice Zlaket falsely declared in the disbarment opinion (Appendix B) (arguably in order to politically discredit Petitioner), that Hirschfeld had *"lied to judges, cheated and abandoned clients."* Challenging such manifest judicial falsehoods is part of Petitioner's resolve to seek certiorari herein.

Petitioner's political Arizona detractors and enemies went to great lengths to disable him. They wanted him out. He is out. But the legal profession and the public are hurt by the roughshod way in which this was perpetrated.

In May, 1994, The State Bar for the first time Moved, as *de facto* prosecutor, for Interim Suspension of Respondent, in matter SB-0049-D, 94-0928. In its May 25 1994 Order, the Arizona Supreme Court refused the Interim Suspension, but placed Respondent upon *Probation,* finding:"*... the Court concludes that the undisputed facts establish that Respondent has breached the Code of Professional Conduct by failing to appear in response to the order or warrant issued by the superior court judge.*" That "superior court judge" was Alfred Rogers, certainly one of the politically well-connected, behind-the-scenes procurers of Hirschfeld's disbarment (probably a defensive tactic in an ongoing federal Civil Rights action.) Rogers' jurisdiction, arguably encompassing his post-decree power to issue his unconstitutional warrant for Petitioner's arrest, was declared void by the Arizona Court of Appeals[6], which twice vacated the outrageous money judgment upon which the wrongful warrant was based[7].

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[6] "Because Judge Rogers had no jurisdiction to proceed after husband's notice was filed, we vacate all rulings and orders made by him after February 24, 1993, including the decree of dissolution of marriage between husband and wife, and the $20,000 order of sanctions against attorney Hirschfeld." *Taliaferro v. Taliaferro*, 184 Ariz. 613, 911 P.2d 619 (App. 1995)

[7] *Taliaferro v. Taliaferro*, 184 Ariz. 613, 911 P.2d 619 (App. 1995)
Taliaferro v. Taliaferro, 188 Ariz. 333, 935 P.2d 911 (App. 1996)

Petitioner was ethically and legally within his rights in refusing to respond to a jurisdictionally void order to appear and the equally void Rogers warrant resulting from his non-appearance.[8]

The question of Judge Alfred Rogers' personal vulnerability to federal Civil Rights tort liability is the subject of another, recently filed Petition for Certiorari,[9]

Since the arrest warrant was unfounded, so, arguably, was the Arizona Supreme Court's 1994 *"Probation"* order flowing from publicity surrounding Petitioner's wrongful arrest. The "*Probation"* Order, in turn, was used as an excuse by the State Bar to initiate the slam-dunk interim suspension entered on 6/7/95, in light of two highly questionable allegations of misconduct:

First, the State Bar alleged ethical misconduct related to the politically-motivated, trumped-up "Criminal Contempt" railroading of Respondent accomplished in the Spring of 1995, in which were involved Superior Court Judges Fields, Hall, and Ryan as well as, on information and belief Judge Rogers. The Disciplinary Committee "recommendation of disbarment" was not based upon said "Criminal Contempt" matter, but it was apparently invoked by Chief Justice Zlaket in attempting to justify disbarment.

The Arizona Supreme Court declined review of the Court of Appeals affirmation of Respondent's wrongful conviction in

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[8] "If, however, the act complained of as contemptuous is the violation of an order, decree, or judgment, and the contemnor can show that the order, decree, or judgment of the court was without jurisdiction or void for some other reason, he may not be held in contempt. *Ferguson v. Superior Court*, 59 Ariz. 314, 320, 127 P.2d 131, 133; *In re Lewkowitz*, 32 Ariz. 317, 318, 257 P. 989; *In re Speakman*, 32 Ariz. 307, 317, 257 P. 986, 56 A.L.R. 169."*Phoenix Newspapers v. Superior Court*, 101 Ariz. 257, 418 P.2d 594 (1966).

[9] *Hirschfeld v. Rogers* ,U.S. Supreme Court #98-642, *9/8/98*

that matter, thereby exhausting Respondent's State Remedies. [10]

At the oral argument on the June 1995 suspension, virtually every Supreme Court Justice made critical comments from the bench before hearing oral argument, indicating a preconceived, and distorted, notion of the factual circumstances surrounding the "criminal contempt" matter, apparently derived from highly biased newspaper publicity. No Arizona Supreme Court Rule 52(c)(6) opportunity for evidentiary presentation was allowed Respondent, who continues to avow that he did not utter any words nor make any threats to the "woman in the courthouse" after his initial lawful questioning (for which he was not charged with contempt.)

Second, the State Bar sought interim suspension because Respondent did, and continues to, rely upon the valid, enforceable attorney fee contract(s) with his clients, in which each client agreed in writing that the initial retainer was earned upon receipt and was non-refundable. As argued below, neither the State Bar nor Supreme Court Rules may constitutionally interfere in such substantive rights.

The Arizona Supreme Court granted the suspension herein on 6/7/95. As a practical matter, the court thereby permanently destroyed Respondent's law practice and his future ability ever to earn a living representing clients. The 1995 "suspension" and its surrounding adverse publicity had the de-facto effect of a permanent disbarment.

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[10] There is still pending, in the Ninth Circuit Court of Appeals, a federal constitutional challenge to the trumped-up application against Petitioner of the "lessening the authority and dignity of the court" provision of Arizona Rule of Criminal Procedure 33.1, as unconstitutionally vague. A Federal Temporary Restraining Order presently enjoins said execution.

The Arizona Supreme Court in June 1995 further urged the State Bar to expeditiously hear and dispose of then-pending Bar Complaints. Arguably, these were not of sufficient weight to justify permanent disbarment or even continuation of suspension. Hearing was set for September 1995. Over Respondent's strong objection, the Bar Disciplinary Committee allowed Bar Prosecutor(s) to file and consolidate a massive *fresh* set of separate claims, and to consolidate and delay the hearing until the end of February, 1996.

Most of the *fresh* claims arose from client-complaints seeking to obtain refunds of non-refundable retainers. In some cases, their particular litigation had been progressing satisfactorily until adverse publicity surrounding Judge Rogers' 1994 jurisdictionally void actions, including wrongful incarceration of Respondent to collect a jurisdictionally void money judgment. In other cases, clients were denied ongoing representation because the 1995 suspension order disabled Respondent. In some, the State Bar actively solicited the refund seeking Bar Complaint from persons who simply requested assistance from the Client Security Fund. Such solicitation by the Bar continues to the present. The Bar Panel's continuance in effect destroyed any chance to resurrect Respondent's law practice, which might marginally have been accomplished, if timely hearing on the then-pending charges had occurred in September 1995.

Recognizing that he would never receive a fair hearing in Arizona under these circumstances, and that the Bar was using the protracted "suspension" status to avoid financial compensation to Respondent's former clients from the Bar's Client Security Fund, Respondent on 2/9/96 served the bar with a letter formally disassociating himself from the Bar and refusing Bar Membership. (Appendix D)

The Bar ignored Respondent's unilateral, constitutionally-based termination of his Bar Membership, and proceeded to

hold fresh, self-serving, hearings *in absentia*, on the moot issue of *whether to recommend disbarment of a person who is not a member of the Bar.* This "beating of a dead horse" was intended by the Bar to justify its previous, untenable charges and/or to run up unnecessary expenses.

At the conclusion of these unnecessary and moot proceedings, the Bar Prosecutor submitted a trumped up, inflated claim of expenses, which included airline tickets for a self-serving out-of-state witness to spend a free one-week vacation visiting his relatives or friends in Arizona.

The Bar had timely received Petitioner's February 9, 1996 notice of disassociation from bar membership (including clear notice that Petitioner would not appear to contest any subsequent hearing on the merits before any non-judge Bar panel). Nevertheless, it maliciously racked up further expenses, in the apparent tactical intention that Petitioner would suffer *de facto* punishment by assessment of costs arising from these unnecessary, moot proceedings.[11]

The cynical, wrongful conclusions of fact[12] contained in the non-judicial, State Bar Committee's recommendation of disbarment result from a jurisdictionally void, Soviet-style "show trial". The Court was not bound to rely upon "findings of fact" by non-judges on bar committees. Petitioner was entitled to a fully contested evidentiary trial before the *only* lawful finder of fact, *the full Arizona Supreme Court.*

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[11] In the event relief is granted by the U.S. Supreme Court herein, it should prohibit assessment of the unnecessary, in-absentia "show trial" expenses, and any further assessment flowing therefrom.

[12] A jurisdictionally sound evidentiary trial would surely refute the disbarment opinion's outrageous falsehoods, deliberate winking at allegations in which Hirschfeld was vindicated by appellate decisions, legislative changes or federal intervention since 1994, and non-credible claims by dishonest, refund-seeking former clients. Factual infirmity is as rampant as intemperate language in the 7/28/98 disbarment opinion.

REASONS FOR GRANTING THE WRIT

Jeopardy of procedurally insufficient, political- or animus- driven disbarment chills vigorous advocacy, offends ethical integrity, and reduces public trust in our legal system.

As avowed by Petitioner in Exhibit E, following his roughshod 1995 suspension, a Domestic Relations lawyer, who was being urged by his male client to stand up and object to a particular injustice during an ongoing proceeding, told his client that he wasn't going to stand up for any amount of money, because of "what they did to Bob Hirschfeld". The chilling effect of the sham bar proceedings decreases the accountability of the judiciary and bar, and decreases the quality of Justice. Lawful, zealous representation of clients should never be a *de-facto* basis for disbarment proceedings.

1.

Refusal of the Arizona Supreme Court to hear evidence, of which it is the sole finder of fact, constitutes denial of due process to an attorney jeopardized with disbarment.

The Arizona Supreme Court is not bound to accept anything from the sham proceedings before a non-judge Bar Panel as representing "facts."[13] But it is obligated to make factual findings, and arguably must hear evidence itself to do so.

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[13] *Matter of Carroll*, 124 Ariz. 80, 602 P.2d 461 (1979); *In re Johnson*, 106 Ariz. 73, 471 P.2d 269 (1970); *Matter of Rubi*, 133 Ariz. 491, 652 P.2d 1014 (1982); *Matter of Haddad*, 128 Ariz. 490, 627 P.2d 221 (1981); *In re Brown*, 101 Ariz. 178, 416 P.2d 975 (1966), *Matter of Stewart*, 121 Ariz. 243, 589 P.2d 886 (1979); *Matter of Geyler*, 114 Ariz. 321, 560 P.2d 1228 (1977), *In re Greer*, 52 Ariz. 385, 81 P.2d 96 (1938).

The structure of the Integrated Bar Association of Arizona precludes it from being an adjudicatory body. For the Arizona Supreme Court to delegate actual adjudication authority to non-judge members of the Arizona Bar is an abdication as constitutionally abhorrent as the prohibited delegation of functional authority by one branch of government to another.[14]

Under the rules applicable to the present proceedings, the Arizona State Bar Disciplinary Committee is *required* to make an affirmative recommendation of disbarment upon evidentiary findings made by non-judges, with non-delegable fact-finding power wrongfully delegated by the Arizona

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[14] *By analogy:* "It is no answer, of course, to say that Congress surrendered its authority by its own hand; nor does it suffice to point out that a new statute, signed by the President or enacted over his veto, could restore to Congress the power it now seeks to relinquish. That a congressional cession of power is voluntary does not make it innocuous. The Constitution is a compact enduring for more than our time, and one Congress cannot yield up its own powers, much less those of other Congresses to follow. See *Freytag v. Commissioner*, 501 U.S. 868, 880, 115 L. Ed. 2d 764, 111 S. Ct. 2631 (1991); cf. *Chadha*, supra, at 942, n. 13. Abdication of responsibility is not part of the constitutional design." Concurrence, Kennedy, J., *Clinton v. City of New York*, No. 97-1374,___ U.S. ___, 118 S. Ct. 2091; 141 L. Ed. 2d 393. (1998)

"Their analysis assumes that Congress conferred a delegable power. It did not; it ceded basic legislative authority. The Constitution vests "all legislative Powers" of the United States in Congress, U.S. Const. art I, @ 1, including the power of repeal. (*I.N.S. v. Chadha*, 462 U.S. 919 (1983)) at 954. As *Chadha* made clear, there are formal aspects of the legislative process that Congress may not alter. Just as Congress could not delegate to one of its chambers the power to veto select provisions of law, it may not assign that authority to the President. Before the question of a delegation's excessiveness ever arises, then, a court must be convinced that Congress did not attempt to alienate one of its basic functions." *Byrd v. Raines*, 956 F.Supp.25, USDC District of Columbia, 4/10/97, Overturned on basis of party standing, *Raines v. Byrd*, 521 U.S. ___(1998).

Supreme Court.[15] A comparable abandonment by Congress of its sole power to hear evidence and find facts, in impeaching sitting Federal Judges would have been unconstitutional.

The 1980 Federal "*Judicial Councils Reform and Judicial Conduct and Disability Act*" was ruled *constitutional* because *it did not mandate* Judicial Conference "*recommendation*" of impeachment. Rather, it allowed a *"suggestion"* to Congress that circumstances invoking potential impeachment existed. Fact-finding on the merits remains, in federal judicial impeachment proceedings, exclusively Congress' domain.[16]

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[15] Only Arizona's Legislature may create a "quasi judicial" administrative body of *non-judges*, authorized to hear and determine whether a certain state of facts which requires application of law exists. *Batty v. Arizona State Dental Board*, 57 Ariz. 239, 112 P.2d 870 (1941). The Arizona Supreme Court is limited to the appointment of pro-tem or permanent inferior court judges, who must comply with the rules and ethics governing judges

[16] "Judge Hastings contends that, at least when the Council has made the determination specified in section 372 (c)(7)(B), the Conference is not merely authorized -- but is required -- by section 372(c)(8) to determine whether a judge has engaged in conduct that may warrant consideration of impeachment by the Congress, and if so, to certify that determination to Congress. We agree that weighty constitutional issues would arise if certification by the Conference to the House were mandatory, because such a scheme would (1) require Article III judges to make a determination that is arguably an exercise of judicial power yet subject to review by another branch of government, n45 or (2) force members of the Judicial Branch to make initial determinations concerning the impeachability of judges, arguably in violation of the Constitution's exclusive assignment of the impeachment power to the Legislative Branch. n46 Cf. *Hayburn's case*, 2 U.S. (Dal.) 409, 1 L.Ed. 436 (1792); *United States v. Ferriera*, 54 U.S. (13 How.) 40, 14 L.Ed. 42 (1851)" *Alcee Hastings v. Judicial Conference of the U.S., et.al.*, 829 F.2d 91, 264 U.S. App. D.C. 306 (1987)

"Neither the councils nor the Conference is required by the terms of the Act to determine whether a judge may have committed an impeachable offense. No one could maintain otherwise." *Alcee Hastings*, id.

The pre-1997 rules under which Petitioner's disbarment proceedings were processed, allow the Bar Committees in effect to adjudicate, holding sham hearings, evidentiary matter which can only be decided by the Arizona Supreme Court itself.[17] Yet, in that constitutionally defective procedure, failure of the accused attorney to object to these Constitutionally unauthorized findings of fact and rulings results in an automatic rubber-stamp disbarment "by default", without actual "adjudication" on the merits by the only permitted finder of fact, the Arizona Supreme Court.[18]

One of the implied benefits of requiring the judiciary to serve under a sworn oath of office, is the application of the various rules of judicial ethics to such jurists. None of the members of Disciplinary Committee(s) are believed to have

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[17] "n1. A self-policing provision whereby lawyers were given the power to investigate and disbar their associates would raise under most, if not all, state constitutions the type of problem presented in *Schechter Corp. v. United States*, 295 U.S. 495. See *1 Davis, Administrative Law Treatise* @ 2.14." *Lathrop v. Donohue*, 367 U.S. 820, 81 S.Ct. 1826, 6 L.Ed. 2d 1191 (1961)

[18] The Arizona Supreme Court's insensate campaign to abrogate due process rights in disbarment proceedings, has promulgated, since the *Hirschfeld* proceedings, new rules arguably infringing to an even greater extent, and further abandoning the court's fact-finding exclusive obligation New 1996 rules render Arizona Supreme Court adjudication of State Bar Disciplinary Recommendations ***Discretionary***, thereby further delegating non-delegable adjudicatory function. (Appx.B, n.1)

"Respondents also retain an appeal as of right to the court on all recommendations of suspension and disbarment" *Notes, 1991 Amd'ts.*

"The amendments change the process and standard of review before the court. The changes were based on the petition for review process set forth in the Rules of Civil Appellate Procedure. Under the amended rules, the court reviews conclusions of law de novo, but applies a "clearly erroneous" standard to questions of fact." *Notes to 1996 Amendments, currently in force.*

taken a Judicial Oath of Office.[19] Mere delegation by the Arizona Supreme Court, alone, cannot substitute for this requirement. The purpose is to protect individual rights and liberties.[20]

There is an adversarial relationship between Petitioner and these non-judges, each of which by membership is bound to the interests of the disbarment-prosecuting agency, the State Bar. Thus, adjudication by these persons, absent Rule of Judicial Ethics safeguards, deprived Petitioner of both State and Federal Constitutional due process.

2.
Designation of the only permissible fact-finding adjudication as an "appeal" denies due process by inverting the burden of proof.

Factual findings and disciplinary recommendations of the non-judge State Bar Panels and Disciplinary Committee are not binding upon the Arizona Supreme Court. They lack the weight of finality, are not *res judicata,* and in general, lack

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[19] **"Section 26. Oath of Office.** "Each justice, judge and justice of the peace shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the State of Arizona, and that he will faithfully and impartially discharge the duties of his office to the best of his ability. The oath of all judges of courts inferior to the superior court and the oath of justices of the peace shall be filed in the office of the county recorder, and the oath of all other justices and judges shall be filed in the office of the Secretary of State." Article 6, Section 26, Arizona Constitution

[20] ARIZ. CONST. art VI, section 26 requires each Arizona justice, judge and justice of the peace to take and subscribe an oath that he or she will support *both* the *Constitution of the United States* and the constitution of the State of Arizona." *The Double Security of Federalism: Protecting Individual Liberty Under the Arizona Constitution*, Stanley G. Feldman and David L. Abney, 20 Ariz. State L.J. 115 (1988) n.16, page 118 (Emphasis supplied)

all of the attributes of the final judgment of a trial court. Nonetheless, the pleading required to be filed in the Arizona Supreme Court by an attorney facing disbarment, is designated "*Opening Brief on Appeal*".

The State Bar Disciplinary Committee has no authority to actually disbar, and being comprised of persons who have not taken a judicial oath of office, has no lawful jurisdiction to adjudicate.

An "Appeal" places the burden of persuasion upon an "Appellant", in direct violation of Arizona Supreme Court Disciplinary Rule 54(d).[21] The Bar Prosecutor bears a meaningless burden of proof at the sham non-judicial Disciplinary Panel "hearing". Thereafter, the burden is shifted to the discipline-threatened attorney, to dissuade the Arizona Supreme Court. Only the Arizona Supreme Court can *adjudicate* a disbarment proceeding. Burden shifting in an "appeal" of the Disciplinary Committee's disbarment recommendation constitutes a deprivation of due process.

3.
Delegation of judicial fact-finding to the prosecutor denies due process.

Disbarment is a manifestly adversarial process in Arizona as elsewhere. It is sought by the agency of the integrated State Bar Association, which appoints a "*Bar Prosecutor*" to achieve the end of disbarment. Members in good standing of the State Bar have a vested interest in seeing the adversarial goals of their organization upheld. Yet the procedure herein challenged, *permits the prosecuting agency to hold the critical factual hearings*. This process is inherently biased in favor of the prosecutor employed by the same agency.

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[21] "**54(d) Burden of Proof**. The burden of proof in the sense of burden of persuasion in proceedings seeking discipline is on the state bar."

Members of the Bar Disciplinary Panels necessarily experience an impossible conflict of interest[22].

In a good-old-boy, crony-ridden, highly politicized association, how can a lawyer/panel-member make findings in *conflict* with presentations of his own association's *Bar Prosecutor* without, even for a fleeting moment, visualizing himself or herself as a *resultant* disciplinary target?

4.

Attempted faithful adherence by an attorney to his obligation to render services in a non-refundable, earned-upon-receipt retainer contract does not constitute ethical misconduct when the client attempts to unilaterally breach the contract by demanding a refund.

An attorney may not charge an excessive fee for his work. Petitioner charged $200 per hour, well within the range accepted in Maricopa County, Arizona for contested Domestic Relations litigation. But there is a fundamental error, in assuming that Lawyer Ethical Rules may abrogate a still-valid contract between Attorney and Client, a material condition of which remains, *that the value of pre-purchased but thus-far unused hours of attorney time may only be rendered to the client as performance hours.*[23]

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[22] *In contrast: Cole v. Town of Miami*, 52 Ariz. 488, 83 P.2d 997 (1938)

[23] The disbarment opinion seeks to abrogate, by declaring void and unenforceable, or by punishing as unethical, reliance upon he following material clause of Hirschfeld's attorney fee contract: "1. RETAINER. I agree to pay the sum of __dollars__($__) as a minimum initial retainer for attorney fees only. The initial retainer is earned upon receipt and is non-refundable, and is for legal services involving not more than __ hours and only through the following occurrences: _____." Each Attorney Fee contract also contained the larger-lettered wording, directly above the client's signature where it cold not be missed:

"I SPECIFICALLY ACKNOWLEDGE THAT THE INITIAL RETAINER SET FORTH ABOVE IS NON-REFUNDABLE."

The United States Constitution prohibits the judiciary from dictating or placing limits upon a laborer's right to contract for his hourly earning ability.[24]

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[24] "The general right to make a contract in relation to his business is part of the liberty of the individual protected by the 14th Amendment of the Federal Constitution. *Allgeyer v. Louisiana*, 165 U. S. 578, 41 L. ed. 832, 17 Sup. Ct. Rep. 427. Under that provision no state can deprive any person of life, liberty, or property without due process of law. The right to purchase or to sell labor is part of the liberty protected by this amendment, unless there are circumstances which exclude the right. There are, however, certain powers, existing in the sovereignty of each state in the Union, somewhat vaguely termed police powers, the exact description and limitation of which have not been attempted by the courts. Those powers, broadly stated, and without, at present, any attempt at a more specific limitation, relate to the safety, health, morals, and general welfare of the public. Both property and liberty are held on such reasonable conditions as may be imposed by the governing power of the state in the exercise of those powers, and with such conditions the 14th Amendment was not designed to interfere. *Mugler v. Kansas*, 123 U. S. 623, 31 L. ed. 205, 8 Sup. Ct. Rep. 273; *Re Kemmler*, 136 U. S. 436, 34 L. ed. 519, 10 Sup. Ct. Rep. 930; *Crowley v. Christensen*, 137 U. S. 86, 34 L. ed. 620, 11 Sup. Ct. Rep. 13; *Re Converse*, 137 U. S. 624, 34 L. ed. 796, 11 Sup. Ct. Rep. 191.

"The state, therefore, has power to prevent the individual from making certain kinds of contracts, and in regard to them the Federal Constitution offers no protection. If the contract be one which the state, in the legitimate exercise of its police power, has the right to prohibit, it is not prevented from prohibiting it by the 14th Amendment. Contracts in violation of a statute, either of the Federal or state government, or a contract to let one's property for immoral purposes, or to do any other unlawful act, could obtain no protection from the Federal Constitution, as coming under the liberty of person or of free contract. Therefore, when the state, ***by its legislature***, in the assumed exercise of its police powers, has passed an act which seriously limits the right to labor or the right of contract in regard to their means of livelihood between persons who are sui juris (both employer and employee), it becomes of great importance to determine which shall prevail, -the right of the individual to labor for such time as he may choose, or the right of the state to prevent the individual from laboring, or from entering into any contract to labor, beyond a certain time prescribed by the state." *Lochner v. New York*, 198 U.S. 45, 25 S.CT. 539, 49 L.ED. 937 (1905) (emphasis supplied)

Petitioner properly maintained throughout the rare attempted-refund claims, that the only justiciable issue was the determination of remaining unexpended hours.

Attack by fee arbitrators and bar prosecutors upon enforceability of the non-refundable initial fee clause, and the *duty of the client* to accept *services* as the attorney's contractual obligation, is a direct attack upon the contract.[25]

Bar prosecution did not allege *refusal or failure* by Attorney Hirschfeld to comply with his contractual obligation to provide the unused balance of hours. Indeed, Hirschfeld had a decade-long history of honoring the remaining-*hours* obligation, sometimes when clients returned for further work, years after the initial Domestic Relations matter appeared to have reached a point of closure or dormancy. Continuing jeopardy of custody/support modification or enforcement uniquely makes the *balance-of-hours* concept appropriate to Domestic Relations litigation.

Petitioner's standard fee contract protected both attorney and client. Terms included specified conditions of employment,

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[25] *Tower Plaza Investments, Ltd. v. DeWitt*, 109 Ariz. 248, 508 P.2d 324 (1973), *Reh. Den.*, 1973, *appeal dism.* 94 S.Ct. 853, 414 U.S. 1118, 38 L.Ed.2d 746.

"The obligation of a contract is defined as the law or duty which binds the parties to perform their agreements. *Home Bldg. & Loan Ass'n. v. Blaisdell*, 290 U.S. 398, 429, 54 S.Ct. 231, 78 L.Ed. 413, 424, 88 A.L.R. 1481, 1490 (1934), and a contract is impaired when a party is deprived of the benefit of his contract by a law, *Northern Pacific Ry. v. Minnesota ex.rel. Duluth*, 208 U.S. 583, 591, 28 S.Ct. 341, 343, 52 L.Ed. 630, 634 (1908). But, to have a constitutionally protected impairment, the law must act on the contract itself as distinguished from the property which is the subject of the contract. *Clement National Bank v. Vermont*, 231 U.S. 120, 34 S.Ct. 31, 58 L.Ed. 147 (1913), aff'g *State v. Clement National Bank*, 84 Vt. 167, 78 A.944 (1911)." *Tower Plaza Investments, Ltd. v. DeWitt*, id. at 109 Ariz. 252.

delineation of duties, limitation of fees expendable in a single day of trial, and an earned-upon-receipt, non-refundable initial retainer clause.

Hirschfeld's clients recognized their advance purchase of a specified number of hours of the attorney's time; that no increase in per-hour rate could be imposed upon these purchased hours; and that they had set up a reserve of time likely to provide needed services even during the financial shortfalls frequently befalling domestic relations litigants before drawn-out cases have concluded.

Often, clients returned months or years after a "final decree" to consume the remaining hours, and to purchase more. Custody and support matters are "modifiable causes." They are never really over until the youngest child reaches majority, and there is constant jeopardy of further modification or enforcement litigation.

The State Bar and Arizona Supreme Court inflicted a wrongful *disability* upon Petitioner by suspending him in 1995. The bar sought to avoid compensating Petitioner's clients from its *Client Security Fund*, established to protect clients in cases of lawyer disability. Then, the Bar alleged, and the disbarment opinion cynically ratified, a theory that Petitioner had "*cheated his clients*", when his fundamental inability to provide hours of work , or to earn enough to negotiate refunds, *was inflicted by the disciplinary proceedings themselves*. Petitioner was, in effect, bound hand and foot, tossed into the ocean, and then penalized for his inability to rescue his drowning clients.

It is faulty logic to claim, as did the bar prosecutors, that the total retainer, divided by the number of hours **partially**

expended from the full amount purchased, implies an unreasonably high "*hourly rate*."[26]

Attorney Hirschfeld consistently offered to work off the unexpended hours. A client's attempt to forcibly "sell back to the lawyer" unexpended hours is a unilateral breach of the contract, which the Bar urged in furtherance of its political disbarment goal. A client may additionally retain other counsel, or decide not to proceed further in litigation, but should not be allowed the unilateral benefit of forced conversion of unused *obligation-hours* into a cash refund.

A lawyer must apportion available time, and ultimately decline additional work, in order to perform the hours for which he has contracted. Hirschfeld was cynically punished for conduct common to his peers. He was entitled to rely upon the non-refundable retainer clause, and to refuse to enter into any new-client contract absent a binding agreement *that he owes hours, not dollars to the client*.

Domestic Relations litigants who find themselves financially stripped by the courts in divorce and child support actions often fail or refuse to pay for subsequently accumulated legal services. Some declare bankruptcy. A lawyer specializing in Domestic Relations, more particularly, representation of Fathers in contested custody matters, runs a very high risk of not being paid at all, unless paid "up front."

The attorney's right to receive and retain a non-refundable retainer, and the right to continue to practice law without

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[26] For example: A client purchases in advance, twenty hours at two hundred dollars an hour. The client, after expending only ten hours, claims that he has been charged four thousand dollars divided by ten hours, or four hundred dollars per hour. The defect in this logic is the assumption that the client should be allowed to unilaterally limit the number of hours owed to him by seeking to terminate the lawyer's work.

"taking" by the State Bar of said property via abrogation of the contract, or "taking" by the State Bar of the attorney's continuing licensure to fulfill the owed-hours obligation, constitute constitutionally protected fundamental liberty interests.

The disbarment opinion wrongfully attempted to extend the ruling of *In re Swartz*, 141 Ariz. 266, 686 P.2d 1236 (1984) to the *pre-purchased hours* concept of Hirschfeld's Attorney Fee Agreement. Such attempted extension fails to recognize the fundamental differences in two types of fee arrangements.

Swartz is a contingency-fee case, in which neither the client nor the attorney, at time of fee-contract formation, could reasonably foresee the number of hours required, nor the magnitude of the money award or settlement.[27]

At the conclusion of Attorney *Swartz's* participation in negotiating and receiving a settlement, there was no further work possible. The matter was concluded. Each of the Hirschfeld cases involved inherently modifiable Domestic Relations matters, in which future consumption of unused hours remained a real possibility.

Cases which were anticipated to be highly contested, and which settled unexpectedly early, almost inevitably were settled upon unrealistic expectations of the parties. Such

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[27] Attorney *Swartz* claimed contingent entitlement to a percentage of a corpus of future money, regardless of how much work was expended in obtaining that money. As it turned out, *Swartz* did little work, and the settlement amount was less than anticipated. *Swartz* then took what would have been his percentage of a larger anticipated award, and the balance of the funds were disbursed for medical expenses. Thus, the client got none of the money, and eventually sought money from *Swartz* via the pressure of a bar complaint.

cases, where substantial unused hours remain, are the most likely to re-erupt months or years later, into even more hotly contested modification or enforcement actions.

The civil client in *Swartz* had, at the time of retaining counsel, an expectation of receiving a money benefit. Hirschfeld's domestic relations clients did not.

No hours were defined in *Swartz's* contingency fee arrangement. Hirschfeld had a rational basis, to require a minimum number of future hours to be purchased on a non-refundable basis. Expectation that a matter, if early-settled, will nevertheless require future consumption of initially unused hours, is reasonable in domestic relations practice.

Swartz was a contingency case. Hirschfeld's disputed domestic relations fee matters were *prohibited*, as a matter of public policy, *from relying on contingency*.

Divorce and custody litigants are among the most emotionally stressed, sometimes irrational, clients a lawyer can encounter. One of the *benefits to the client* of a non-refundable retainer, is that the lawyer is not subjected to economic deterrence (the likelihood that he will not be paid) in vigorously pursuing his client's ultimate best interests.

Often, *pendente lite* domestic relations proceedings initially strip the client of disposable assets or income. A reserve of pre-paid attorney hours is crucial to his survival in such litigation. By agreeing to a substantial, non-refundable, initial retainer, the client creates a non-convertible, beneficial reserve, the antithesis of a contingency-fee matter

Applying *Swartz* to a Domestic Relations context is therefore like comparing apples to oranges.

The right to receive and retain the non-refundable retainer, and the right to continue to practice law without the taking by the State Bar of said property via abrogation of the contract, constitute constitutionally protected fundamental liberty interests.

5.

Arizona Supreme Court Disciplinary Rule 31(c)(10) prohibiting resignation at the sole discretion of an attorney, unless "in good standing", violates the free association guarantee of the First Amendment, U.S. Constitution

The disbarment opinion, Appendix B, claims Respondent disassociated himself to "avoid discipline." But "discipline" can take many forms, including prohibition or encumbrance of future bar admission in a particular state. "Disbarment" is a symbolic, involuntary ejectment, which is meaningless as applied to a *non-member of the Bar Association.* To maintain the fiction of bar membership in order to boast of an ejectment is a political, publicity-seeking sham.

The free association guarantee of the First Amendment encompasses a person's *right not to belong* to an organization when there is neither intent nor interest in performing activities regulated by or pertaining to that organization.[28] There are serious federal; constitutional problems in a system in which, once admitted to membership, a lawyer is denied voluntary disassociation. Arizona Bar membership is mandatory in order for a lawyer to earn his living by representing persons in court. [29] But continued, forced, membership serves no constitutionally permissible purpose

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[28] *See Carroll v. Blinken*, 42 F.3d 122; (2nd Cir., 1994)

[29] Arizona Supreme Court Rule 33(c) "Practice in Courts."

when the lawyer no longer seeks to earn his living by representing persons in court.

An integrated bar, or a labor union, may control admission to its membership, and conduct of its members. But politically motivated defamatory publication of a *moot ejection* from membership (disbarment) of a person, who is already, as a matter of right, not a member, should be declared unconstitutional. The association may, at its risk, publish defamatory, even scandalously untrue allegations of misconduct against any person. The forcible retention of an unwilling association member, who does not seek to perform the work over which the association exerts its monopoly power, for the purpose of the spectacle of forcible ejection, exceeds the *active-law-practice-regulatory purpose* of association membership.

Under the Arizona Bar's "Catch-22" rules, a lawyer cannot "resign" unless he is currently "in good standing"[30]. The rules allow a lawyer to "consent to disbarment" only if he admits culpability in the Bar's charges against him.[31] Respondent did not "consent to disbarment", and continues to deny that the accumulated, factually dishonest Bar charges and Arizona Supreme Court conclusions, justified the virulent ongoing behind-the scenes campaign against him. Thus, if one does not look beyond the Supreme Court Rules, there exist no formal procedures for disassociation from the Bar in the circumstances herein.

A simple declaration of disassociation, such as submitted by Petitioner on February 9, 1995, (Appendix E) was sufficient to effect a severance of membership, because it was based upon Petitioner's state[32] and federal constitutional right, as one who does not at the time of disassociation seek to earn

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[30] Arizona Supreme Court Rule 31(c)(10). *See* Appendix C

[31] Arizona Supreme Court Rule 56(b). *See* Appendix C

[32] *See* footnote #4(a), supra

his living by representing persons in court. Lack of acknowledgement or formal acceptance does not render the disassociation ineffective. To the extent that the Arizona Supreme Court Rules provide no mechanism for voluntary, unilateral disassociation, they are unconstitutional and therefore void.

The Bar, a creature of the state Supreme Court, collectively bargains, lobbies, and litigates on behalf of its lawyer-members to substantively affect conditions and conduct of their employment. The Bar has clear attributes of a labor organization. The lawyer's client is the employer. The lawyer, as a condition of his employment, must be a Bar member. Arizona Supreme Court Rule 33(c) prohibits a prospective client from employing, for purposes of in-court representation, anyone but Bar-member lawyer-employees. This is the functional equivalent of a "closed union shop".

The State Bar collectively deals, on behalf of its lawyer-employee members, with complaints and fee arbitrations brought by client-employers. By disciplining members upon claims of "excessive fees", the State Bar affects and controls the hourly rate at which an employee-lawyer may contract with his employer-client.

The labor organization[33] comprising mandatory-members of State Bar of Arizona has the nature of a "Craft Union,".[34] in

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[33] **"Labor organization**. Means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment....." *Black's Law Dictionary, Fifth Ed.*, p. 786

[34] **Craft Union**. Union composed of members of the same trade or craft, as carpenters, plumbers, etc. regardless of the company for which they work." *Black's Law Dictionary, Fifth Ed.*, p. 1374

that the Bar-member-employees are usually independent contractors or members of law firms, and client-employers are usually diverse individuals or corporate entities ".

The Arizona State Bar engages in collective representation of its involuntary membership by Moving and persuading its parent and creator, the Arizona Supreme Court, to issue directives and new orders collectively impacting the substantive earnings and working conditions of Bar Members, as well as overt legislative lobbying.

Respected jurists have drawn the analogy between the State Bar Association and a labor organization.[35] [36] [37] Such Association members may resign at will, whatever the economic consequences of their disability to labor in the field monopolized by the Association.[38]

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[35] Justice Stevens, with whom Justices White and Blackmun concurred, likened the monopolistic licensing practices of the Arizona State Bar Association to those of medieval trade guilds. **n2,.** dissent in *Hoover v. Ronwin*, 466 U.S. 558; 104 S.Ct. 1989; 80 L.Ed.2d 590; 52 U.S.L.W. 4535; 1984-1 Trade Cas. (CCH) P65,980 (1984). Justice Stevens' labor organization analysis is valid notwithstanding the *Hoover v. Ronwin* decision having found members of the Arizona Bar Admissions Committee personally immune from Federal Antitrust violation liability.

[36] "There is, by contrast, a substantial analogy between the relationship of the State Bar and its members, on the one hand, and the relation of the employee unions and their members, on the other. *Keller v. State Bar of Calif.*, 496 U.S. 1, 110 S.Ct. 2228, 110 L.Ed.2d 1, 58 USLW 4661 (1990)

[37] Judge Barbara Crabb,, USDC.,WD.,Wis., abrogated mandatory membership in the integrated Wisconsin Bar for infringement of a dissident lawyer's First Amendment rights of free association. Although abrogation was later reversed on different grounds, her analysis regarding the labor organization nature of the State Bar is still valid. *Levine v. Supreme Ct of Wis. et.al*, 679 F. Supp. 1478 (USDC WD, Wis. 1988)

[38] "The proviso ... can also be sensibly read to refer only to the union's right to determine *who shall be allowed to join and to remain* in the union.." White, J., Concurrence, *Pattern Makers League of North America v. N.L.R.B.*, 473 U.S. 95; 105 S. Ct. 3064; 87 L. Ed.2d 68; 53 U.S.L.W. 4928; 102 Lab. Cas. (CCH) P11,463; 119 L.R.R.M. 2928 (1985) (Emphasis supplied)

Mandatory membership in a labor organization *in which the litigant seeking relief desires to enter or continue the practice of representing clients in court* is distinctly different from *a former member asserting his right not to remain a member, in the context of future non-representation.* Petitioner's First Amendment freedom of association interest (*or freedom not to be associated*) in this situation cannot be balanced against the kind of state interest which might apply if he were seeking to represent clients in court.

Respondent 's February 9th 1996 notice of Disassociation from the State Bar is effective and must be honored by the Bar. It moots and renders ineffective any nominal "disbarment" expulsion procedure purported to impinge upon current Bar Members. The function of such procedures is manifestly to remove existing Bar Members from Bar Membership. That function has already been accomplished by Respondent's unilateral disassociation.

CONCLUSION

The Supreme Court should grant Certiorari and thereafter vacate the July 28, 1998 Opinion and August 26, 1998 Judgment and Mandate of the Arizona Supreme Court. Arizona Supreme Court Rule 31(c)(10), to the extent that it fails to provide for voluntary disassociation from Bar membership, and Arizona procedures denying evidentiary trial as of right before the only court having jurisdiction, and inverting burden of proof, should be voided as repugnant to the United States Constitution.

Robert A. Hirschfeld

Dated November 23, 1998

Robert A. Hirschfeld
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Phoenix AZ 85060
(602) 840 0342
Petitioner, Pro-Se

APPENDIX A
(Mandate and Judgment)
Filed Aug. 26, 1998

SUPREME COURT OF ARIZONA

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA

ROBERT A. HIRSCHFELD
Respondent

Supreme Court
No. SB-97-0003-D

Disciplinary Commission

Nos. 89-0868, 90-1307, 91-1015, 93-0378, 93-0712, 93-1403, 93-1609, 93-1787, 93-1806, 93-1831, 94-0392, 94-0853, 94-0859, 94-0863 94-0864, 94-0959, 94-0973, 94-0977 94-1065, 94-1215 94-1227, 94-1708 94-1755 & 95-0305

MANDATE AND JUDGMENT

This matter having come on for hearing before the Disciplinary Commission of the Supreme Court of Arizona, it having duly rendered its decision and this Court having considered the matter, filed its Opinion on the 28th day of July, 1998.

The time for filing a Motion for Reconsideration has expired and no motion was filed.

IT IS ORDERED, ADJUDGED AND DECREED that ROBERT A. HIRSCHFELD, a suspended member of the State Bar of Arizona, is hereby disbarred for conduct in violation of his duties and obligations as a lawyer pursuant to the Opinion of this Court, effective as of the date of this judgment.

IT IS FURTHER ORDERED that pursuant to Rule 63(a), Rules of the Supreme Court, ROBERT A. HIRSCHFELD shall notify all of his clients, if any, within ten (10) days from the date of this judgment and order, of his inability to continue to represent them and that they should promptly retain new counsel, and should notify each court and division in which respondent has any pending matter, whether active or inactive. Respondent shall promptly inform this Court and the Commission of his compliance with this judgment and order as provided in Rule 63(d), Rules of the Supreme Court of Arizona.

IT IS FURTHER ORDERED that pursuant to Rule 52(a)(8), Rules of the Supreme Court of Arizona, the State Bar of Arizona is granted judgment against ROBERT A. HIRSCHFELD for costs incurred by the State Bar of Arizona in the amount of $7,212.86, together with interest at the legal rate from the date of this judgment.

DATED this 26th day of August, 1998

_____

CHARLES E. JONES
Vice Chief Justice

(Mailing Certificate)

APPENDIX B
(Arizona Supreme Court Opinion)
Reported at __ Ariz. __, 960 P.2d 640; 1998
Filed July 28, 1988

SUPREME COURT OF ARIZONA

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA

ROBERT A. HIRSCHFELD
Respondent

Supreme Court
No. SB-97-0003-D

Disciplinary
Commission

Nos. 89-0868, 90-1307,
91-1015, 93-0378,
93-0712, 93-1403,
93-1609, 93-1787,
93-1806, 93-1831,
94-0392, 94-0853,
94-0859, 94-0863
94-0864, 94-0959,
94-0973, 94-0977
94-1065, 94-1215
94-1227, 94-1708
94-1755 & 95-0305

OPINION

ZLAKET, Chief Justice.

This matter comes to the court on the unanimous recommendation of a State Bar hearing committee and our own Disciplinary Commission that respondent Robert A.

Hirschfeld be disbarred. We have jurisdiction pursuant to Ariz. R. S. Ct.53(e). [1]

The State Bar charged respondent with twenty-four counts of unethical conduct involving twenty-two different clients. Although he was given notice and an opportunity to be heard, respondent did not participate in the presentation of evidence to the hearing committee, nor did he appear before the Disciplinary Commission. He did, however, file a notice of appeal and several briefs with this court, challenging our authority over him and contesting the validity of certain charges. He also moved to strike portions of the State Bar's answering brief. We reject respondent's jurisdictional arguments, deny his motion to strike, and find that the charges of unethical conduct are well supported by the evidence and legally sound. Considering the extensive aggravation presented and the lack of any significant mitigation, we agree that disbarment is appropriate.

JURISDICTION

Respondent contends that he is no longer subject to the court's disciplinary authority because he "voluntarily disassociated" himself from the State Bar during the pendency of these proceedings. Although our rules once permitted resignation in lieu of disbarment, they currently require a lawyer to be in good standing in order to resign. Ariz. R. S. Ct. 31(c) (10).

Respondent has not cited, nor do we find, legal authority that would deprive this court of jurisdiction to impose sanctions

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[1] The Disciplinary Commission issued its report five days before a rule change that made our review of these matters discretionary. Under the previous rule, applicable here, respondent is entitled to an appeal as a matter of right.

on him or any other person admitted to practice law in this state.

In an analogous context, we have held that it is proper to discipline a lawyer who becomes a judge for conduct occurring prior to his taking office. See In re Riley, 142 Ariz. 604, 607, 691 P.2d 695, 698 (1984). "The better and more workable practice is that jurisdiction in disciplinary actions should be based upon the position the individual held at the time of the alleged misconduct." Id. Thus, regardless of respondent's claimed renunciation of his bar membership, he cannot escape the consequences of his unethical activities.

BACKGROUND

The current disciplinary action is the culmination of a lengthy history. In May of 1994, the State Bar moved for respondent's interim suspension pursuant to Ariz. R. S. Ct. 52(c). A superior court judge had earlier imposed a sizeable monetary sanction on him for disclosure violations in a domestic relations matter, the details of which can be found in several published opinions. See Taliaferro v. Taliaferro, 184 Ariz. 613, 911 P.2d 619 (App. 1995), vacated by 186 Ariz. 221, 921 P.2d 21 (1996); Taliaferro v. Taliaferro, 188 Ariz. 333, 335, 935 P.2d 911, 913 (App. 1996). The superior court had also issued an arrest warrant for respondent when he failed to appear at various Order to Show Cause hearings intended to determine why the sanctioned amount had not been paid. To avoid service of the warrant, respondent allegedly fled the jurisdiction. Before absconding, he apparently attempted to find substitute counsel for his pending matters, but was not completely successful. Consequently, several clients were left unrepresented during his absence. Some of them filed complaints that are at issue in this proceeding.

Following oral argument in 1994, this court denied the suspension motion because the record at that time was insufficient to support the desired relief. We did, however, place respondent on probation under the supervision of a practice monitor until the State Bar could proceed to a "final determination of the various charges against [him]." In re Hirschfeld, SB-94-0049-D (Ariz. May 25, 1994) (order).

Thereafter, the superior court held respondent in contempt for abusing and harassing the opposing party in another domestic relations matter. See Hirschfeld v. Superior Court, 184 Ariz. 208, 908 P.2d 22 (App. 1995). This action followed an evidentiary hearing that prompted the judge to remark, "I find that [respondent's] testimony justifying those actions to be disingenuous at best, incredible, possibly perjurious." Id. at 211, 908 P.2d at 25. The State Bar filed a second motion for interim suspension. During the same time period, respondent's practice monitor resigned and the Bar began intensively investigating the complaints that have resulted in this appeal.

After again hearing oral argument and considering the matter further, we determined that respondent's continued practice of law would result in substantial harm, loss, or damage to the public, the legal profession, and the administration of justice. Thus, we entered an order of interim suspension under Ariz. R. S. Ct. 52(c). In re Hirschfeld, SB-95-0033-D (Ariz. June 7, 1995).

FACTS

The twenty-four counts against respondent present a variety of transgressions. The largest category is made up of clients who were left unrepresented at hearings, trials, and other matters when respondent fled the jurisdiction in 1994 to avoid his sanction. The next group includes those clients

who entered into what respondent calls "non-refundable retainer" agreements.

Respondent's misconduct regarding the first group is unquestionable. He clearly abandoned clients without notice in order to serve his own interests, leaving them to fend for themselves until he returned. This behavior violated Ethical Rules 1.3 and 1.4.

Eight of the counts involved so-called "non-refundable retainers. "Respondent typically represented husbands in dissolution and custody proceedings. His custom was to obtain a significant retainer at the inception of the representation, with a written fee agreement that stated: "The initial retainer is earned upon receipt and is non-refundable." He repeatedly relied on this clause to keep the full amount received, no matter how long he represented the client or how much work he performed.

One of the most egregious incidents involved a client who paid him $ 8000 for representation in a dissolution action. A few days later, the client and his wife reconciled. The reasonable value of respondent's professional services at that point was $ 2000. Nevertheless, he refused to return the unearned portion of the $ 8000, citing the fee agreement.

In addition to the non-refundable language, respondent's fee agreements provided: "If there is any disagreement concerning the terms of this agreement or attorneys' fees, I agree to binding arbitration with the Fee Arbitration Committee of the State Bar of Arizona." In a number of instances, clients sought relief from the Fee Arbitration Committee. Respondent appeared at some but not all of the arbitration proceedings. He lost every fee dispute. Although the awards required him to return a portion of the retainers, he did not comply.

Other allegations against respondent run the gamut of unethical conduct. In one matter, for example, he filed an ex parte request for emergency custody supported by two affidavits prepared by him and signed by the client. The affidavits contained material misrepresentations that respondent would have discovered had he exercised reasonable diligence. The trial court imposed Rule 11 sanctions against him. In another matter, respondent and his client were held in contempt and ordered to pay $ 9350 in sanctions for violating the terms of the preliminary injunction that is issued in every dissolution action. See Little v. Superior Court, 180 Ariz. 328, 331, 884 P.2d 214, 217 (App. 1994). In yet another, he advised a client to sign a financial disclosure form attesting that no third party was holding funds for him or on his behalf. The statement was plainly false because respondent was in possession of certain savings bonds that the client had given him. In still another case, he declared in open court that the opposing attorney, who represented his client's estranged wife, had taken the case only after she had "hiked up her skirt" for him. The comment was clearly inappropriate and made solely to abuse and harass the wife and her lawyer. The trial judge imposed sanctions on respondent after determining that no truthful basis for the allegations existed.

DISCUSSION

Both the hearing committee and the Disciplinary Commission found respondent's refusal to refund the unearned portions of the retainers to be a violation of Ethical Rule 1.5. We agree. The rule's requirement is plain and simple: "A lawyer's fee shall be reasonable." Ethical Rule 1.5(a) lists eight factors to be considered in making such a determination. A detailed analysis of those factors is not needed here because the uncontested evidence establishes the unreasonableness of respondent's fees. In each instance, either the client discharged him because of dissatisfaction

with his performance, or the matter concluded before he provided sufficient legal services to earn the entire retainer according to his agreed-upon hourly rates.

Respondent makes no attempt to justify his fees. Instead, he takes the approach that they are private contractual matters between himself and his clients, and not the concern of anyone else. He suggests that this court has no power to interfere. He is wrong. Many years ago, we made it clear that a fee agreement between lawyer and client is more than a mere business arrangement.

The profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client. Thus, in fixing and collecting fees the profession must remember that it is "a branch of the administration of justice and not a mere money getting trade." We hold, therefore, that if at the conclusion of a lawyer's services it appears that a fee, which seemed reasonable when agreed upon, has become excessive, the attorney may not stand upon the contract; he must reduce the fee. In re Swartz, 141 Ariz. 266, 273, 686 P.2d 1236, 1243 (1984) (citation omitted). The foregoing is particularly true in the emotionally volatile area of domestic relations. Respondent's clients usually engaged him at extremely difficult periods in their lives. They frequently had been served with petitions for dissolution and injunctions prohibiting them from entering their own homes. In some cases, they faced imminent hearings to determine the custody of their children. Under the circumstances, they were vulnerable to overreaching fee agreements and respondent took advantage of that vulnerability.

We do not hold that non-refundable retainers are per se violations of Ethical Rule 1.5. A retainer, in its classic sense, is a fee paid to secure a lawyer's availability, and it may be

appropriate in certain circumstances. Similarly, a flat fee charged for specific legal services can be proper. Regardless of how the fee is characterized, however, each situation must be carefully examined on its own [*11] facts for reasonableness. Under Swartz, lawyers are obligated to review the services they have rendered to determine whether the fees ultimately collected are reasonable. 141 Ariz. at 273, 686 P.2d at 1243. In this case, the fees respondent pocketed were clearly unreasonable. Additionally, his promise to arbitrate fee disputes implied that the amounts paid were subject to independent review, and placed upon respondent an obligation to participate in the arbitration process in good faith, which, of course, he did not do.

SANCTION

Both the hearing committee and the Disciplinary Commission found substantial aggravating factors and no significant mitigation. American Bar Association, Standards for Imposing Lawyer Sanctions §§9.22, 9.32 (1986); see also In re Rivkind, 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990) (observing that the ABA standards are a "suitable guideline in imposing discipline"). We agree. Respondent has prior disciplinary offenses. His actions here reflect dishonest and selfish motives. Standards, supra, at @ 9.22. He has demonstrated a clear pattern of willful misconduct. Id. Those he has professed to serve with zeal, his clients, [*12] are those he has harmed the most. He continues to exhibit not only indifference but outright defiance to making restitution. Id.

In his submissions to this court, respondent claims to be the victim of an organized vendetta by judges, opponents, bar officials, and anyone else who has disagreed with him because of his promotion of the "Fathers' Rights Movement." We wish to be clear about why he is being disbarred. It is because he has lied to judges, cheated and abandoned clients,

and acted in despicable ways toward his opponents. Respondent has manifested an unabashed willingness to violate court rules, ethical precepts, and even common decency in pursuit of his perceived goals.

Disbarred.

THOMAS A. ZLAKET, Chief Justice

CONCURRING:
CHARLES E. JONES, Vice Chief Justice
STANLEY G. FELDMAN, Justice
FREDERICK J. MARTONE, Justice
JAMES MOELLER, Justice (Retired)

Rule 31(c)(1), Rules of the Arizona Supreme Court
"**(1) Classes of Members. Members** of the state bar shall be divided into four classes: active, inactive, suspended and judicial. A disbarred person is not a member."

Rule 31(c)(10), Rules of the Arizona Supreme Court
"**10. Resignation**. Members in good standing who wish to resign from membership in the state bar may do so, and such resignation shall become effective when filed with the office of the state bar, accepted by the board, and approved by this court. After the resignation is approved by this court, such member shall be known as a "resigned member in good standing."

Rule 31(c)(10)(B), Rules of the Arizona Supreme Court
"**A.** Such resignation shall not be a bar to institution of subsequent discipline proceedings for any conduct occurring prior to the resignation. In the event such resigned member thereafter is disbarred, suspended or censured, the resigned member's status shall be changed from "resigned member in good standing" to that of a person so disciplined. Such resignation shall not be accepted if there is a disciplinary charge or complaint pending against the member."

Rule 33(c), Rules of the Arizona Supreme Court
(C) Practice in courts. No person shall practice law in the State of Arizona without being admitted to the bar by compliance with the following rules, provided that an attorney practicing in another state or territory or insular possession of the United States or the District of Columbia may be permitted by any court to appear in matter pro hac vice, in accordance with the procedures set forth in subpart (d) of this Rule.

Rule 52(c)(6) Interim Suspension: Hearing (Eff. 1991)
"(6) Hearing: At the hearing, the court shall hear argument and may accept testimony and other evidence. A written order or decision shall be issued forthwith."

Rule 53(e) Review by the Court (Effective 1991 until 1996)
"(e) Review by the Court. Respondent or the state bar may appeal to the court from a commission recommendation of censure, suspension, or disbarment within ten days from the date of service of the commission report or later if the commission, in its discretion, authorizes a stay. A notice of appeal shall be filed with the disciplinary clerk.

Rule 53(e)(3) Court Procedure (Effective 1991 until 1996)
"(3) Court Procedure. Upon receipt of the record on appeal from the disciplinary clerk in cases where a notice of appeal has been filed, the clerk of the court shall mail a notice of docketing and filing of the record on appeal to the disciplinary clerk, respondent, respondent's counsel, if any, and the state bar. The parties may file briefs and present oral argument pursuant to the rules governing civil appeals. Upon conclusion of the proceedings, the court shall promptly enter an appropriate order or judgment. The decision of the court shall be in writing and shall state the reasons for the decision.

Rule 53(e)(1) Petitions for Review (Effective eff. 12/1/96)
"(e)(1) Petitions for Review. Within thirty days after service of a commission report recommending censure, suspension or disbarment, respondent or the state bar may file with the disciplinary clerk a petition for review by the supreme court. A cross-petition for review may be filed within fifteen days after service of a petition for review."

Rule 53(e)(5) Order Granting Review(Effective eff. 12/1/96)
"(e)(5) Order Granting Review. If the court grants review..."

Rule 54(d) Rules of the Arizona Supreme Court

"**(d) Burden of Proof**. The burden of proof in the sense of the burden of persuasion in proceedings seeking discipline is the state bar. That burden is on the petitioning party in proceedings seeking transfer to disability inactive status. that burden in proceedings seeking reinstatement and transfer from disability inactive status is on respondent or applicant."

Rule 56(b) Rules of the Arizona Supreme Court

"**(b) Disbarment by Consent**. The following provisions shall apply to admissions that constitute disbarment by consent:

1. Any member against whom charges have been made or a formal complaint filed may voluntarily consent to disbarment by filing with the commission, in duplicate original, a written, verified consent to disbarment in the form prescribed in these rules or as otherwise approved by the court. The consent to disbarment shall be effective only upon acceptance by this court. The general form of consent to disbarment shall be as follows"

"IN THE SUPREME COURT OF THE
STATE OF ARIZONA

"In re:

(NAME OF MEMBER) a member of the State Bar of Arizona, Respondent

No. SB _____
Bar. No. _____
CONSENT TO DISBARMENT

"I (name of lawyer) residing at (city and street address), voluntarily consent to disbarment as a member of the State Bar of Arizona and consent to the removal of my name from the roster of those permitted to practice before this court, and from the roster of the State Bar of Arizona.

I acknowledge that (charges) a formal complaint have/has been (made) filed against me. I have read the (charges) complaint, and the charges there made against me are true in substance and in fact. I further acknowledge that I cannot

successfully defend the charges made against me. I do not desire to contest or defend against the charges, but wish to consent to disbarment. I have been advised of and have had an opportunity to exercise my right to be represented in this matter by a lawyer. I consent to disbarment freely and voluntarily and not under coercion or intimidation. I am aware of the rules of the Supreme Court with respect to discipline, disability, resignation and reinstatement, and I understand that any future application by me for admission or reinstatement as a member of the State Bar of Arizona will be treated as an application by a member who has been disbarred for professional misconduct, as set forth in the (charges) complaint (made) filed against me. The misconduct of which I am accused is described in the (charges) complaint bearing the number referenced above, a copy of which is attached hereto.

"DONE at _____ Arizona on _____ 19__.

"(signature)_____(verification)"

(Rule 56(b) Rules of the Arizona Supreme Court

Respondent's Note: Respondent quotes the foregoing "form" only because he has referred to its existence in the Petition. At no time did Respondent even consider the use of such an admission to the multifarious, untrue charges against him.)

APPENDIX D
(Hirschfeld's Notice of Disassociation)
Served February 9, 1996

Robert A. Hirschfeld, JD
PO Box 80220
Phoenix AZ 85060

February 9, 1996

The State Bar of Arizona
111 W. Monroe, Suite 1800
Phoenix AZ 85003-1742

On July 7, 1995, at 5:00 PM (the last day I was able to represent clients before the interim suspension took effect), I publicly burned my 1995 Bar Card on the steps of the Arizona Supreme Court Building. The wrongful, prolonged suspension has made it impossible ever to resurrect what had been a law practice diligently serving the litigative needs of Fathers.

I hereby completely disassociate myself from the State Bar of Arizona. The Bar may treat this letter as my resignation, regardless of the technicality of my standing. However the Bar chooses to treat it, I am no longer a member as of February 9, 1996 of an association whose self-serving political tactics and cronyism are anathema to the protection of the rights of litigants.

Accordingly, I consider all pending Disciplinary Proceedings against me to be moot. I vehemently deny each and every pending Disciplinary charge against me, and I do not "consent to disbarment" because the Bar's Catch-22 rules wrongfully predicate such consent upon admission of wrongdoing.

A mechanism used by the Bar when there is no substance to Disciplinary charges, is to nevertheless pursue such matters on the basis that a Lawyer has "failed to cooperate." I hereby declare that, as a non-member of the Bar, there shall be no further "cooperation" in such sham proceedings. I consider myself to be an active adversary of the Bar.

I shall not participate in the pending Disciplinary hearing(s). As a non-member, I would consider the Bar's failure to close my files and dismiss all pending actions against me, including any attempt to try me in absentia, to be mere posturing.

Sincerely,

Robert A. Hirschfeld, J.D.
Formerly, Arizona State Bar Number 010003

Robert A. Hirschfeld
PO Box 80220
Phoenix AZ 85060
(602) 840 0342
In Propria Persona

APPENDIX E:

BEFORE THE STATE BAR OF ARIZONA

IN THE MATTER OF	) No. SB95-0033-D
THE STATE BAR OF ARIZONA	) MEMORANDUM RE
v.	) OBJECTION TO
ROBERT A. HIRSCHFELD	) RECOMMENDATIONS
Previous SBA #010003	) OF BAR COMMITTEE
Respondent	) 6F
_____	)

During the month allowed for winding up my law practice in 1995, I attended a Domestic Relations Seminar at the County Supervisor's Auditorium. Topics included the "*Little v. Superior Court*" Appellate rule, *Little v. Hauser*, 180 Ariz. 328, 884 P.2d 214 (Ariz. App., May 3, 1994) that had disallowed the use of community funds to pay a Respondent spouse's attorney fees. My client, Captain Little, and I, had been unfairly sanctioned in that case.

"Why discuss this," said an impatient lawyer in the audience. "Nobody here has been hurt by that Rule."

Sitting near the front row, I stood up, turned, and silently faced the auditorium full of my peers. There was laughter. Another attorney jokingly said, "Bob, you have no shame." I did not answer. I answer now.

I, Robert A. Hirschfeld, J.D., former member of the Arizona Bar, have nothing during my decade of Bar Membership, of which to be ashamed.

I AM PROUD of my accomplishments in a decade as a practicing attorney, as a dedicated, idealistic, outspoken and caring advocate for preservation of the father-child relationship and of Civil Liberties.

I AM PROUD of the estimated 1100 father-child relationships which were preserved in 700 cases during my decade, through necessary "pit bull" litigation against often vicious opposing counsel and sometimes outrageously biased judges.

I AM PROUD of my Civil Liberties victories, which included prohibition of ADES racial discrimination in Adoption and Foster Care (*Maria Child v. ADES*, USDC AZ, CIV 92-403 PHX EHC); stopping Judicially ordered child abuse in the form of administration of the Penile Plethysmograph and Ammonia Sexual Aversion Therapy to an 11 year old boy (*Natural Mother of Minor Child v. Superior Court, Hon. James McDougall*, 1-SA-92-155); obtaining custody for an unwed father in highly publicized, contested proceedings, where the access-denying mother had first shot the child in the head and then committed suicide (*Matter of Anonymous Child "KDL", Maricopa County Superior Court* JD 006791); protection of Fifth Amendment Privilege in Domestic Relations contexts (*Montoya v. Superior Court*, 173 Ariz. 129,132; 840 P.2d 305 (App. 1992), 19 FLR 1101 (1/5/93)); protection of First Amendment newsrack distribution at post offices (*Jacobsen v. U.S. Postal Services et.al*, 812 F2d. 1151, 13 Med. L..Rptr 2371 (9th Cir. 3/13/87).

I AM PROUD of the numerous pro-bono services I rendered during my decade of law practice, through the *Volunteer Lawyers Association*, the *Arizona Civil Liberties Union*, the *National Congress for Fathers and Children*, and other public-service organizations.

I AM PROUD of my service to the State Bar of Arizona as the System Operator (Sysop) of the State Bar Computer BBS (Bulletin Board) for several years, until usurped by political maneuvering; as an initiating force and Committee Member behind what became the computer linkage between the State Bar BBS and the Supreme Court's Appellate publication computers; as member of various committees and subsections of the Maricopa County and State Bars; as participant in Bar Convention presentations.

I AM PROUD of my personal legislative advocacy, which included the successful gender-neutralization of our domestic relations statutes (ARS 25-325) just before I entered law school; advocacy of joint custody legislation in the years before it finally entered our statutes; testimony against the corruption and excesses of ADES Child Protective Services and certain Juvenile Court practices, before a Judiciary committee; testimony in Senators Furman and Salmon's committee investigation of the Penile Plethysmograph and Ammonia Aversion Therapy.

The "*Little v. Superior Court*" rule, opposed on an *Amicus Curiae* basis by the State Bar and Maricopa County Bar, was rendered ineffective when the legislated amendment of ARS 25-315 went into effect on July 15, 1996. (The Bar Disciplinary Committee nevertheless seeks to punish me for correctly advising my client, notwithstanding this belated legislative vindication.)

I AM PROUD of consistently exhibiting the courage to attack bias and unconstitutionality in the leading-edge of domestic relations litigation; to challenge at great personal and professional jeopardy, several truly monstrous, incompetent and father-hating Judges and Commissioners of the Maricopa County Superior Court; to complain about court-administrative adoption of "streamlined" Superior Court procedures, such as the "Gerst 45 Minute Pendente-

Lite Hearing" short-shrift local rules, which deny domestic relations litigants due process for judicial expediency.

I AM PROUD to have repeatedly stood up and taken the heat on behalf of fathers falsely accused of sexual molestation or domestic violence; of fathers denied access to their children by maternal tactics of moving away, campaigns of alienation, or chronic visitation intransigence; of fathers subjected to unconscionable financial burdens based upon wrongful or perjured evidence; of championing the paternal underdog in domestic relations and juvenile court.

I AM PROUD to have forced duty-evading judges to do their jobs; to persistently demand presence of court reporters and require Findings of Fact and Conclusions of Law; to have very vigorously litigated and appealed when most others would have backed down to avoid making waves; to have openly exposed dishonest or overreaching opposing counsel; and consistently to have followed my conscience and independent professional judgment in representing my clients' interests.

I AM PROUD that in seeking to protect the relationship between a blameless, caring, joint-custodial father and his daughter, whom a vicious mother and grandmother had attempted to alienate and sequester from him, I properly, twice, asked the mother in the courthouse hallway, "Where are you hiding my client's child."

I AM PROUD that I kept my client's confidentiality in accordance with the Rules of Ethics, in not disclosing his plea-for-help gesture wherein he consumed an overdose of anti-depressant and heart medication, and that I continue to stand up to the judicial monster whose malicious misconduct attempted to destroy both the father-child relationship and my law career.

I AM PROUD that I obtained sole custody, in a number of heavily litigated cases, for fathers who had been maliciously and falsely accused of sexual molestation. Two of those cases defeated monstrous mothers who had each physically molested a child during a custody battle, in attempts to validate the false accusation against the father.

Alan Shayo, previous bar prosecutor, in seeking my interim suspension, accused me, in oral argument before the Supreme Court, of "*placing my duty to my client above my duty to the court.*" He was correct.

Fidelity to one's client is in the highest tradition of the legal profession.

I AM PROUD of that, too. A court or "Zlaket" discovery rule which attempts to usurp that ethical fidelity to the client, is an affront to that highest tradition.

The vicious, politically-corrupt sham proceedings conducted by the bench and bar in an attempt to muzzle and discredit me, shall some day be discredited in larger, fairer public and legal forums.

Had I worked in constant fear of such apparently inevitable attacks by the bench and bar, I would not have been able to achieve as much benefit during my ten years of law practice. I entered the bar as a skeptic of the cronyism, cynicism, bias, prejudice, and injustice of the bench and bar, determined to effect as much change as possible from within, before being overwhelmed by the unfair and vicious coalition of judicial and bar miscreants, dedicated to my expulsion. I am a whistle blower who is, predictably, being attacked by the entrenched establishment which I have exposed. I refused, and I still refuse, to be intimidated.

The fatal, unjust, blow to my ability to represent clients in court was struck on June 7, 1995. Because of the deliberate tactical extension of bar proceedings in September 1995, any formal opposition to the sham hearings was rendered moot. My law practice had already been permanently destroyed by the bench and bar's maneuvering, by the Spring of 1996.

I had ten good years. I offended those baser elements of the bench and bar who, through their corruption and abuse of power, deserved and still deserve to be offended. Despite the self-serving and in some cases perjured allegations of a tiny minority of my clients, solicited by the bar, my "pit bull" litigative persistence ultimately succeeded for a remarkably high percentage of my clients. Fidelity to clients and to the cause of Fathers Rights is, for me, laudable. There is nothing in my legal career for me to be ashamed about.

In ten years of no-compromise representation of worthy clients, I have demonstrably achieved my goal, regardless of the manner in which the judicial and bar miscreants attempt to discredit me.

Although I was accustomed during my career to sniping attacks from the lower bench and bar, I did not resolve to disassociate myself from the State Bar until my faith in the fairness of the Arizona Supreme Court was destroyed by that Court's succumbing to the publicity and political pressure created by the howling mob in June, 1995.

I burned my Bar Card at 5:00 PM, July 7, 1995 on the steps of the Arizona Supreme Court Building.

It was symbolic of the end of my successful, decade-long career. The choice to disassociate myself from the corrupt, unjust Bar Association, effective February 9, 1996, was solely mine. I cannot constitutionally be required to remain a member. But I still believe that, even after my absence as a

client-representative/advocate from the courtrooms, there is much that I may and shall do, to root out and defeat the Philistines. They may gloat, by these proceedings, believing they have rid their courts and their cases of Bob Hirschfeld. But they shall be confronted, in propria persona, by hundreds of Bob Hirschfelds who have learned, or shall learn, from me the necessary, tough, lawful tactics and nuances of law needed to protect father-child relationships against the Philistines.

In furtherance of that goal, firmly believing in the impossibility of being fairly tried by either the presently constituted State Bar or the Arizona Supreme Court, I therefore cast out a further gauntlet, in the spirit of Emile Zola's January 1898 newspaper indictment of the French Judiciary and Military, in the infamous Dreyfus case. Historically, Zola was attacked under French law for his published indictment. In 1904, because of the truth of his allegations, Zola was acquitted. Adjacent streets in Phoenix, Arizona are named in honor of Captain Dreyfus and Emile Zola.

I ACCUSE

I ACCUSE Maricopa County Superior Court Judge Alfred Rogers of unfitness for the bench by virtue of his habitual intemperance, his avowed bias and prejudice which arguably stems from his personal history of parental unfitness with regard to his oldest children, his avowed boast that he will not award joint custody nor custody of any kind to a father, his foul record in 2 1/2 years on the domestic relations bench in which he carried out that boast, his habitual abuse of judicial power, his habitual refusal to abide by the rules of Civil Procedure, his habitual evasion of domestic relations trials by informing counsel in chambers at the onset that he had already made up his mind, his refusal to perform his duty to honor a timely, effective, notice of Change of Judge,

his making of outrageous, unfounded punitive orders, his gross disrespect for litigants and counsel, his calling a physician-litigant "asshole" during a proceeding of record, followed by his secret order that the court reporter excise the expletive from the transcript, his habit of unexpectedly demanding wallets from male litigants in his courtroom, whereupon Judge Rogers would rifle through the wallet on the bench, making demeaning comments about photographs and other contents; Alfred Rogers' forcing or allowing the lawyer for one side to engage in ex-parte communication, therein dictating to such lawyer forms of pleadings or tactical actions to be taken; Alfred Rogers' personal, extra-judicial vendetta against Robert A. Hirschfeld, his failure to recuse himself pursuant to Rule 81, Arizona Code of Judicial Conduct, Canon 3(E)(1)(a), his active defamation of Robert A. Hirschfeld to other judges and on information and belief, his continuing campaign of political pressure upon other Superior Court judges, Appellate Judges, the State Bar, Bar Prosecutors and others to engineer and effectuate the destruction of Robert A. Hirschfeld's law practice.

I ACCUSE Maricopa County Superior Court Judge Norman Hall of unfitness for the bench by virtue, on information and belief, of his habitual intemperance, sometimes in the company of his next-door neighbor, Alfred Rogers, his avowed bias and prejudice against male parents, his admission that he believes that only mothers should receive custody of young children, his habitual abuse of judicial power, his habitual refusal to abide by the rules of Civil Procedure, on information and belief, his conspiracy with Alfred Rogers and Kenneth Fields to effectuate Judge Rogers' personal, extra-judicial vendetta against Robert A. Hirschfeld, his wrongful procurement of criminal contempt prosecution of Robert A. Hirschfeld, and his committing perjury in his sworn testimony as a witness in the Criminal Contempt trial of Robert A. Hirschfeld, and his failure to

recuse himself pursuant to Rule 81, Arizona Code of Judicial Conduct, Canon 3(E)(1)(a).

I ACCUSE Maricopa County Superior Court Judge and former Presiding Domestic Relations Judge Kenneth Fields of cronyism and unethical ex-parte conspiracy in his administrative capacity with Judges Alfred Rogers, Norman Hall and Michael Ryan to effectuate Judge Rogers' and Judge Fields' personal, extra-judicial vendettas against Robert A. Hirschfeld; Judge Fields' wrongful procurement of criminal contempt prosecution of Robert A. Hirschfeld; further, his unethical ex-parte conspiracy in his administrative capacity with Judge Alfred Rogers to effectuate Judge Rogers' infringement of Robert A. Hirschfeld's Constitutional rights, including Hirschfeld's right not to be incarcerated for debt, and Hirschfeld's right to appear in 1994 on behalf of clients in the Maricopa County Courthouse without the chilling effect of attempted or threatened unlawful arrest.

I ACCUSE Maricopa County Superior Court Judge Michael Ryan of collusion with one or more of Judges Alfred Rogers, Norman Hall and Kenneth Fields or Special Prosecutor Craig Mehrens regarding the conduct or sentencing phase of the wrongful criminal contempt trial of Robert A. Hirschfeld, and his failure to recuse himself pursuant to Rule 81, Arizona Code of Judicial Conduct, Canon 3(E)(1)(a).

I ACCUSE Maricopa County Superior Court Judge Silvia Arellano of collusion with one or more of Judges Alfred Rogers, Norman Hall and Kenneth Fields regarding t he unlawful attempt of Judge Rogers to incarcerate Robert Hirschfeld to collect a debt, and further in Judge Arellano's submission of wrongful bar complaints against Robert Hirschfeld arising from the short-term disabilities in client-representation wrought by Judge Alfred Rogers; further, that Judge Silvia Arellano in chambers terrorized the wife of an

attorney substituting for Robert Hirschfeld, by threatening to incarcerate said wife if she did not disclose Robert Hirschfeld's telephone number, and Judge Arellano's failure to recuse herself pursuant to Rule 81, Arizona Code of Judicial Conduct, Canon 3(E)(1)(a).

I ACCUSE former Maricopa County Superior Court Judge Rufus Coulter, father of Panel 6F member Lisa Coulter, of unfitness, during his Domestic Relations tenure, for the bench by virtue of his habitual intemperance, his habitual abuse of judicial power, his making of outrageous, unfounded punitive orders, his gross disrespect for litigants and counsel, and his assessing inflated or fictitious expert-witness fees against Robert Hirschfeld when requested by Robert Hirschfeld to continue a hearing on the morning Hirschfeld had been in Tucson all night attending the birth of his first grandchild.

I ACCUSE Maricopa County Superior Court Judge Frank Galati, of unfitness, during his Domestic Relations tenure, for the bench, by virtue of his habitual invocations of de minimis evidentiary anomalies to justify his highly biased practice of awarding custody to mothers and denying custody to fathers, and his assessment of inflated punitive sanctions to cover up for his own embarrassment or ineptitude on the bench.

I ACCUSE former Maricopa County Superior Court Gloria Ybarra of unfitness, during her Domestic Relations tenure, for the bench by virtue of her habitual invocations of de minimis evidentiary or procedural anomalies to justify her highly biased practice of awarding custody to mothers and denying custody to fathers, of gender-biased draconian financial orders against males only, and her assessment of inflated punitive sanctions to cover up for her own embarrassment or ineptitude on the bench.

I ACCUSE Maricopa County Superior Court Commissioner Toby Maureen Gerst of unfitness, during her Domestic Relations tenure, for the bench by virtue of her habitual invocations of de minimis evidentiary or procedural anomalies to justify her highly biased practice of awarding custody to mothers and denying custody to fathers, of gender-biased draconian financial pendente lite orders against males only, and her assessment of inflated punitive sanctions to cover up for her own embarrassment or ineptitude on the bench.

I ACCUSE former Maricopa County Superior Court Presiding Juvenile Judges Kimball Rose and James McDougall of overreaching and empire-building in concert with ADES Child Protective Services, and of attempting to suppress, by threats of bar complaints and criminal prosecution, legitimate criticism by Robert Hirschfeld of the self-serving, child-harmful procedures and referral agencies associated with the Juvenile Court. On information and belief, **I ACCUSE** these judges of collusion with the various other judges in a long-term attempt to wrongfully remove me from representation of clients before their courts.

I ACCUSE certain sitting and pro-tem Judges of the Court of Appeals of selective rejection of discretionary Special Actions, based upon political pressure exerted upon them by Alfred Rogers and cronies of Alfred Rogers.

I ACCUSE the Arizona Supreme Court of selective and wrongful adjudication protecting or covering for the misconduct of Alfred Rogers; rejection of a 1994 discretionary Special Action seeking to prohibit arguably unconstitutional Contempt proceedings by Alfred Rogers, in which his refusal to accept Rule 42(f)(1) disqualification was an issue, and thereafter ruling as untimely the disqualification issue which had been previously briefed on appeal; further that said selective rulings were in part based

upon political pressure exerted upon the Supreme Court by Alfred Rogers and cronies of Alfred Rogers.

I ACCUSE Supreme Court Justice Zlaket of personal bias and prejudice against Robert Hirschfeld, expressed in his pre-argument antagonistic comments from the bench on or about June 7, 1995, arising in part from extrajudicial publicity and in part from his knowledge that Robert Hirschfeld challenges the constitutionality of the so-called "Zlaket Rules" ARCP Rule 26.1; further his failure to recuse himself pursuant to Rule 81, Arizona Code of Judicial Conduct, Canon 3(E)(1)(a).

I ACCUSE Supreme Court Justice Feldman, who had in 1994 properly persuaded his fellow justices of the wrongfulness of my suspension, of having since then developed an apparent personal bias and prejudice against Robert Hirschfeld, expressed in his pre-argument antagonistic comments from the bench on or about June 7, 1995, arising in part from inaccurate extrajudicial newspaper attorney, to dissuades failure to recuse himself pursuant to Rule 81, Arizona Code of Judicial Conduct, Canon 3(E)(1)(a).

I ACCUSE "Special Prosecutor" Craig Mehrens in the "Criminal Contempt" trial of Robert Hirschfeld, of direct conspiracy with at least some of the judicial and bar conspirators set forth above, to deny to Robert Hirschfeld due process, to suborn perjured testimony from witnesses and to argue for criminal conviction on the basis of passion or prejudice from Judge Michael Ryan; further, that Craig Mehrens on the record claimed to be presenting to Judge Ryan the sentencing desires of witness Norman Hall, with no opportunity to cross examine Norman Hall regarding such sentencing desires.

I ACCUSE The Arizona Department of Economic Security, Child Protective Services division, not only of the malfeasance, failure to protect children, seizure of children when no credible allegations of abuse existed, political cronyism with the Judges of the Juvenile Court, but more significantly, that ADES/CPS, on information and belief, has engaged in profiteering and financial arrangements with entities it employs, including but not limited to Phoenix Memorial Hospital, various Adoption agencies, various professional evaluators, etc., to whom ADES/CPS personnel direct dependent children in their care. On information and belief, one of the strong pressures upon the State Bar and the State Supreme Court to disbar Robert Hirschfeld is the politically-motivated pressure from persons within ADES/CPS.

I ACCUSE Directors, stockholders, and silent beneficiaries of Phoenix Memorial Hospital of colluding with the State Bar to seek expedited suspension of Robert Hirschfeld for the purpose of defeating his representation of the victimized boy and his mother in a multi-million dollar tort suit against the Hospital, arising from wrongful use of the Penile Plethysmograph and Ammonia Aversion Therapy. I believe that a thorough investigation may reveal financial connections between the defunct Two Million Dollar Sexuality and Addiction Program, and the persons responsible for committing wards of the court to that program.

I ACCUSE Litigative Opponents who made complaints to the State Bar of fabricating charges for tactical advantage in litigation or as personal vendettas against Robert A. Hirschfeld.

I ACCUSE former Clients who made complaints to the State Bar of fabricating charges, and in several cases of perjuring themselves before Committee 6F, in an attempt to obtain refund of non-refundable retainers, or because of their

inability to recognize their own misconduct as causing certain losses in Domestic Relations Court. That this group of clients includes some for whom I obtained custody against great odds, or advised to stay out of hearings in which I believe their arrest would have been likely demonstrates that lawyers cannot expect beneficiaries of their services to be decent, let alone grateful.

I ACCUSE Phoenix Newspapers, Inc. of deliberately biased mis-reporting of the events by which the State Supreme Court was influenced in its wrongful suspension of Robert Hirschfeld. It is no coincidence that former courthouse-assigned reporter Brent Whiting was alerted and already sitting in Judge Hall's Domestic Relations courtroom when Hall made his previously unannounced charge of Criminal Contempt against Hirschfeld.

I ACCUSE the Arizona Adoption Industry, including ethnic adoption profiteers, of wrongful collusion and likely financial interaction with persons having child-placement authority within ADES/CPS and/or the Juvenile Bench.

I ACCUSE the Arizona State Bar, generally, and its internal staff and elected officers, of a campaign not only of internal political maneuvering against Robert A. Hirschfeld, but also of conspiring with one or more of Judges Alfred Rogers, Norman Hall, Kenneth Fields or others to place Robert Hirschfeld economically in a position where such externally imposed disability could be cynically used for accusations regarding failure of client communication, failure to appear on behalf of clients, and refusal to refund non-refundable attorney fees.

I ACCUSE Disciplinary Committee 6F, generally, with refusal to disqualify inherently biased Committee members, with refusal to hear the original group of de minimis complaints expeditiously in September 1995, so as to prolong the proceedings to the point of permanent

destruction of Robert Hirschfeld's ability to resurrect his law practice, of holding hearings in absentia before the Supreme Court ruled upon motions to quash such hearings, of failing to inform Robert Hirschfeld of the continued hearings apparently held in March 1996, of making clearly biased and pre-judged recommendations to the full Committee based upon personal animus of 6F members, and generally of creating a sham in compliance with what is believed to be the pendente lite "pressure" placed upon Committee 6F by the various persons and agencies set forth above.

I ACCUSE removed Bar Prosecutor Alan Shayo, whose initial participation was professional and humane, of subjugating his professional independence to the "pressure" (which he told Hirschfeld's counsel was responsible for Shayo's abrupt termination of settlement negotiations and institution of "interim suspension" proceedings demanded by the howling mob, and more particularly by the improper political machinations of Judges Rogers, Fields and probably Hall).

I ACCUSE Yigael Cohen and Nancy Greenlee of direct conspiracy with at least some of the judicial and bar conspirators set forth above, to deny to Robert Hirschfeld due process, to suborn perjured testimony from lay witnesses in the four days of "in absentia hearings", and to argue for recommendations on the basis of passion or prejudice from Committee 6F.

Finally, **I ACCUSE** my fellow Arizona Lawyers, who shall not be named individually herein, of either joining what I have called the "howling mob", or standing by and watching the injustice unfold.

Since my suspension, at least one Domestic Relations lawyer, who was being urged by his client to stand up and object to a particular injustice during an ongoing proceeding,

reportedly told his client that he wasn't going to stand up for any amount of money, because of "what they did to Bob Hirschfeld". The chilling effect of these sham proceedings decreases the accountability of the judiciary, and decreases the quality of Justice in Arizona.

I was mailed a cardboard box containing about fifteen pounds of transcripts from four days of in-absentia Committee 6F proceedings. In the limited time since receipt, I have had no more than an opportunity to skim through them. Without the ability to conduct discovery upon the persons and agencies whom I have above accused of complicity in, or exerting wrongful political pressure upon said proceedings, I am unable to frame a particularized response. Because, pursuant to constitutional right, I have not been a member of the State Bar of Arizona since my letter of disassociation dated February 9, 1996, before said hearing(s), I believe I have no obligation to assist in the illusion of regularity behind which the participants seek to perfume the stench.

As to the accusation of "failure to cooperate", it should be recognized that I am not someone who begs permission to remain in this corrupt Bar Association, and after the ruination of my Law Practice, the "howling mob" should expect me to be a vigorous advocate of improvement or replacement of the structures which have allowed the injustice. Rather than "cooperating", I shall be an implacable, "pit bull" legal and political adversary.

In placing me on "probation" in 1994, the Supreme Court required me to demonstrate to the Law Office Management Assistance Program (LOMAP) that I was correcting office defects which suffered from the Alfred-Rogers disability inflicted that year. Not only did I "cooperate", my office reorganization was given a clean bill of health by LOMAP. But in its haste to suspend me, in part because I did not

refund non-refundable retainers, the State Bar rendered my law office economically incapable of even considering such refund over a period of time. The State Bar lost the ability to cajole, threaten or blackmail me as a vulnerable member, when it procured and perpetuated my suspension.

By not specifically picking apart the testimony and findings of in absentia hearings which should not have been conducted, I am not in any way admitting to the correctness or legitimacy of same. Once again, I deny each and every allegation of ethical misconduct relating to the subject hearing(s).

It remains my fervent hope that the good, honest, professionals in the Bench and Bar will see past my preceding justified accusations against the collegial rotten apples who have spoiled the barrel.

Dated July 29, 1996

Robert A. Hirschfeld
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In Propria Persona

(Mailing Certificate)